

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1099 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO.

STATE OF GUJARAT

Versus

PRAKASHKUMAR L HINGU

Appearance:

MR D.N.Patel, in -charge P.P. for Appellant
MR PK JANI for Respondent No. 1

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/06/1999

ORAL JUDGEMENT

1. The respondent-accused was placed on trial relating to the offences punishable under Section 324 and 504 of the Indian Penal Code and Section 135 of the Bombay Police Act, in the Court of the Chief Judicial Magistrate, at Mehsana, who at the conclusion of the hearing came to be acquitted. Being aggrieved by such order of acquittal, the present appeal is filed by the State.

2. In short it is the case of the appellant-State that on 27-10-88 at 5-30 a.m. Dhanjibhai Nanjibhai-the complainant was sleeping in the courtyard of his house.

At that time, suddenly he woke up owing to charivari. He could realize that his son Hasmukhbhai, Urmilaben, the wife of Hasmukhbhai and respondents were hotly altercating and wrangling. Urmilaben was questioning the respondent as to why he was licentiously following her, projecting dissoluteness. Hasmukhbhai having come to know thought that something wrong might happen. He scuttled and scolded the respondent. On being exposed as hound and because of philippic, the respondent was annoyed. He abused Urmilaben and Hasmukhbhai and gave a knife blow to Hasmukhbhai, as a result, Hasmukhbhai was injured on his back. Jayantibhai, another son of the complainant and Mafatlal Bhogilal from the neighbourhood hearing the shouts rushed to the scene of offence. The respondent then fled. Jayantibhai and Mafatlal took Hasmukhbhai to the Civil Hospital for treatment. Thereafter, a complaint in the Mehsana Police Station was lodged. At the conclusion of the police investigation, a charge sheet against the respondent was filed in the court of Chief Judicial Magistrate, Mehsana. A charge, Exh.5 against respondent was framed and when a plea was taken, he pleaded not guilty. The prosecution, then led the evidence in order to prove the charge. Appreciating the evidence before him, the learned Chief Judicial Magistrate reached the conclusion that the prosecution failed to establish the charge beyond reasonable doubt. He, therefore, acquitted the respondent. It is against that order of acquittal, the present appeal is filed.

3. Mr. D.N.Patel, learned in-charge Public Prosecutor submitted that the learned Chief Judicial Magistrate fell into error in appreciating the evidence of all the witnesses. On the basis of conjectures and inferences, the learned Chief Judicial Magistrate gave findings in favour of the respondent which in no case are tenable.

4. With meticulous care and finicky details and with the active assistance of the learned Public Prosecutor I have gone through the entire evidence and the judgment rendered by the learned Chief Judicial Magistrate. Nowhere I find any reason to interfere with the findings of the learned Chief Judicial Magistrate. I am in general agreement with the reasonings given by the learned Chief Judicial Magistrate and the conclusions he has drawn. When I am in general agreement, it is not necessary to restate those reasonings. However, I will again peruse the evidence on record as it is vehemently submitted that the learned Chief Judicial Magistrate fell into error in appreciating the evidence and drawing the conclusions. Considering the submission it is also to be

examined whether the learned Chief Judicial Magistrate has concluded merely on the basis of the conjectures and inferences or on the basis of the evidence on record and what is logically possible.

5. Before I proceed, it may be stated that the evidence of doctor Minaben R Robertson (Exh.20) in clear terms establishes that there was incised wound on the back of Hasmukhbhai when she examined him on 27-10-88 at 5-10 a.m. Who caused the injury is the only question raised for consideration. No doubt, the complainant has made an attempt to support the case of the prosecution as if he saw the incident, but when he had to face the grilling cross-examination, he had to admit that he did not see the incident. Hearing the shouts, he woke up and when he went to the scene of offence at a little distance, he saw that his son Hasmukh was injured on his back. About the presence of the respondent, he has also made crosscutting statements. In the examination in chief, according to him, when he was going to the scene of offence, the respondent was not there, he had run away ; but in the cross-examination he made an attempt to establish the presence of the respondent at the scene of offence saying that he saw the respondent there. When thus he has made conflicting statements regarding witnessing the incident and presence of the respondent, his evidence on the point has to be kept out of consideration. The learned Chief Judicial Magistrate was therefore, perfectly right in not placing the reliance for want of cogent corroboration. I may now discuss the evidence of others and examine whether cogent corroboration is there on record.

6. Hasmukhbhai is no doubt the injured, and the evidence of the injured would be the best evidence because the injured can testify as to who assaulted and who caused him the injury ? But in the case on hand, the evidence of injured Hasmukhbhai is not free from doubt. According to him , at the time of incident he was sleeping, and in the next breath he says that he was brushing the teeth in the Chokdi. At that time the respondent brought out the knife from his pocket and ran amok towards him, he therefore, ran away and saved himself. Subsequently, he states that respondent succeeded in giving a blow on his back. Thus his evidence raises a doubt about the manner in which he came to be injured because at one stage he shows impossibility of respondents succeeding in causing the injury as he had already run away ,and in the next breath improving the statement he comes out with the say that the respondent

gave a blow on his back and he sustained the injury. According to this witness, hearing the wrangling he had gone to the scene of offence where his wife and respondent were altercating, and when he made an attempt to rebuke the respondent, a knife blow was given to him. At that time, his father was at home, but hearing the shouts, his father and neighbours had rushed to the scene of incident. By the time, the respondent had already left the place. He thus, makes it clear that his father-the complainant did not see the respondent and even did not witness the incident. He informed his father who caused him the injury, but at one stage, he had to admit that before his father came there, he had become unconscious. If this is so, the say of Hasmukhbhai that he apprised his father as to how he sustained injury involving the respondent is doubtful. The learned Chief Judicial Magistrate has, therefore, rightly discarded the evidence of Hasmukhbhai in view of such conflicting statements he has made.

7. The third material witness on which the prosecution relies much is the evidence of Urmilaben, the wife of Hasmukhbhai qua whom the incident happened. It is the case of the prosecution that after getting up early in the morning, Urmilaben was going to the outskirts of the village for answering the natural call. At that time, with oblique motive i.e. may be to philander with her the respondent followed her. She therefore, questioned as to why he was following and then altercation and philippic between the two took place. It may be noted that he has admitted in her evidence that the respondent and his family members were often talking ill of her, as a result she was being looked down upon by the society. The learned Chief Judicial Magistrate has, therefore rightly considering the material on record held that because of such talks, Urmilaben was annoyed and she had bred enmity ; Because of that enmity and being the interested person, she made an attempt to involve the respondent. It is to be noted that when her father in law- the complainant hearing the shouts reached the scene of incident, she did not state anything to him about the incident and kept her lips tight. There is therefore, a reason to believe the case in defence. It is the case in defence that Urmilaben was having the affairs with a third person and on the date of incident that third person was going with Urmilaben. At that time, smelling a rat, Hasmukhbhai in order to ascertain, hurriedly followed her and he saw the paramour of Urmilaben, and therefore, there was wrangling between the two. That person giving a knife blow ran away. Urmilaben and respondent were having for the aforesaid

reason inimical terms as the respondent and his family members were talking ill of her, she and Hasmukhbhai falsely involved him engineering a case. Such defence is plausible.

8. Mafatlal Bhogilal and Jayantibhai-brother of Hasmukhbhai had reached the place of incident who took injured Hasmukhbhai to the hospital for necessary treatment. Either of the two is not examined though available and no reason is assigned for such omission. According to the Investigating Officer, he recorded the statements of the neighbours who had rushed to the scene of incident, but neither of the witnesses reaching the scene of incident from the neighbourhood is examined as no-one was supporting the case of the prosecution. The cumulative effect of such evidence is that the case of prosecution is not free from doubt. The learned Chief Judicial Magistrate was, therefore, right in not placing the reliance on the evidence of either of the three main witnesses.

9 It may be noted that about the time, the witnesses may not be sure and may approximately state about the time of the incident, but in the case on hand, Hasmukhbhai and Urmilaben have with certainty stated about the time of the incident. According to them, the incident happened at 5-30 a.m. in the morning or few minutes thereafter. Dr. Minaben does not support such say as she has stated that at 5-10 a.m. in the morning Hasmukhbhai was brought to her hospital for necessary treatment. A doubt, therefore, arises as to how an injured could be taken to the hospital for treatment at 5-10 a.m. when the incident certainly happened at 5-30 a.m. or few minutes thereafter. Nothing on this issue is elucidated. When that is so, the court is entitled to hold that the case of the prosecution is not free from any reasonable doubt.

10. It is the submission of the learned in-charge Public Prosecutor that above stated three witnesses support each other. When thus they get corroboration, their evidence may be accepted and ignoring few infirmities in their evidence, the respondent may be convicted. The contention must fail. In law one infirm cannot support the like ; and if at all one infirm supports another infirm, it is no corroboration in the eye of law. It cannot therefore be said that above named three witnesses corroborate each other and their evidence is worthy of credence and acceptable.

11. I will now switch over to a charge regarding the offence punishable under Section 504 of the Indian Penal Code. It is the case of the prosecution that respondent becalled Urmilaben and Hasmukhbhai when he was rebuked. In order to prove the charge under Section 504 of the Indian Penal Code it is necessary for the prosecution to bring on record examining the concerned persons, the actual words uttered by the accused so that the court will be able to determine whether the utterance of a particular word can cause insult or cause the other one to commit breach of peace. It is pertinent to note that in this case that evidence is not brought on record and no explanation is offered for the omission. The learned Chief Judicial Magistrate was therefore perfectly right in holding that the prosecution miserably failed to prove the charge of the offence punishable under Section 504 of the Indian Penal Code. On such evidence which is fishy, the learned Magistrate is also right in holding that the charge of the offence under Section 135 of the Bombay Police Act is also not proved.

12. Thus, the evidence on record shows that the prosecution failed to establish the charge levelled against the respondent. The learned Chief Judicial Magistrate has rightly appreciated the evidence and it cannot be said, as canvassed before me, that his appreciation of evidence and conclusions drawn are arbitrary, perverse and wholly in disregard of sound principles of law. When a query is made ,Mr. D.N.Patel, in-charge Public Prosecutor has tried his best, but is not able to convince me that there is the error on the part of the lower court in appreciating the evidence on record.

13. In the result, this appeal being devoid of merits is liable to be dismissed and is dismissed accordingly. The order of acquittal passed on 30-9-1991, in Criminal Case No.60-89, by the Chief Judicial Magistrate,Mehsana, is hereby maintained.

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